**MF 96-2**
**Tax Type:** **MOTOR FUEL USE TAX**
**Issue:** **Off-Highway Usage Exemption**

**STATE OF ILLINOIS**
**DEPARTMENT OF REVENUE**
**OFFICE OF ADMINISTRATIVE HEARINGS**
**SPRINGFIELD, ILLINOIS**

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| **THE DEPARTMENT OF REVENUE** | ) | |
| **OF THE STATE OF ILLINOIS** | ) | **Docket #** |
| **v.** | ) | **License #s** |
| | ) | |
| **TAXPAYER** | ) | |
| | ) | **Karl W. Betz** |
| **Taxpayers** | ) | **Administrative Law Judge** |

## RECOMMENDATION FOR DISPOSITION

### APPEARANCES

OWNER, owner, for TAXPAYER.

### SYNOPSIS

This case involves TAXPAYER A and TAXPAYER B the two "taxpayers" in this proceeding. Each business hauled cargo for hire in commercial motor vehicles during the period at issue herein. TAXPAYER A filed a Claim for Credit for the period of August, 1987 through June, 1989 with the Department for alleged non-highway use of motor fuel through utilization of a power take-off (PTO) mechanism in its trucks. The Department paid the claim and then assigned an auditor to ascertain the validity of the alleged non-highway usage of motor fuel. The auditor determined that part of the claim was not valid and Notice of Tax Liability (NTL) No. XXXXX was issued in the amount of $3,083.00 (inclusive of tax, penalty and interest).

Taxpayer TAXPAYER B filed a similar Claim for Credit with the Department for alleged non-highway use of motor fuel by a power take-off (PTO) mechanism in its trucks. After the Department paid the claim an auditor determined that all of the claim was not valid and Notice of Tax Liability (NTL) No. XXXXX was issued

in the amount of $1,310.00 (inclusive of tax, penalty and interest) for the period of July, 1990 through August, 1991. Because taxpayer filed a timely protest to each assessment, a hearing was scheduled.

OWNER, owner of TAXPAYER A, testified at hearing.

At issue in this proceeding is if taxpayer is entitled to a refund for special fuel allegedly used for off-road purposes. OWNER stated at the hearing that while he doesn't mind paying the tax, he would like relief from the interest.

**FINDINGS OF FACT**

After reviewing the transcript of record, including all documentary evidence admitted therein, I make the following factual determinations:

1. Taxpayer TAXPAYER A operated as a sole proprietor during the period of August, 1987 through June, 1989. This entity conducted business operations as a trucking company by hauling sand, rock, coal, gravel, etc., and was owned by OWNER. (Tr. pp. 7-10; Dept. Ex. No. 3)

2. Taxpayer TAXPAYER B operated as a trucking company by hauling sand, rock, coal, gravel, etc. during the period of July 1990 through August, 1991, and this business entity was organized as a corporation. (Tr. pp. 7-10; Dept. Ex. Nos. 2 and 4)

3. Each taxpayer filed refund claims on Form RMFT-11 with the Department for Illinois motor fuel tax allegedly used for purposes other than operating vehicles upon the public highways. The time frames for these refund claims are August, 1987 through June, 1989, and July, 1990 through August, 1991. (Dept. Ex. Nos. 1 and 2). The Department approved the two claims and then referred them to the Audit Division for verification which resulted in the Department performing an audit upon taxpayer for each respective timeframe. (Tr. pp. 5-6; Dept. Ex. Nos. 1-4)

4. For each audit period the auditor reduced the allowable amount of taxpayer's claim because taxpayer had not provided sufficient documentary evidence to support its claimed off-road usage of motor fuel. (Dept. Ex. Nos. 1-4)

5. Auditor McDuffey, for the claim period of August 1987, through June, 1989 established a tax liability of $2,263.00. This was $811.00 less than the $3,074.00 tax refund amount approved and paid to taxpayer pursuant to its RMFT-11 claim form. The reason for the $811.00 decrease is because the August through December, 1987 months were deemed to be outside the statute of limitations for the audit period. Pursuant to statutory authority, the auditor did cause to be issued a Correction of Returns or Determination of Motor Fuel Tax Due and this served as the basis for NTL No. XXXXX (Dept. Ex. Nos. 1 and 3)

6. Auditor Lyons established tax liability of $1,048.00 for the period of July, 1990 through August, 1991, and this liability was the amount paid to taxpayer on its original refund claim. Pursuant to statutory authority, the auditor did cause to be issued a Correction of Returns or Determination of Motor Fuel Tax Due and this served as the basis for the Department's issuance of NTL No. XXXXX. (Dept. Ex. Nos. 2 and 4)

7. The taxpayer did not submit any documentary evidence comprised of its books and records to support its original position that it used some motor fuel for off-road purposes. (Tr. pp. 3, 12)

**CONCLUSIONS OF LAW**

Section 13 of the Motor Fuel Tax Law (35 ILCS 505/13) authorizes a refund when Motor Fuel is lost or used for a purpose other than operating a vehicle upon the public highways. This Section states in pertinent part:

> The claim shall state such facts relating to the purchase, importation, manufacture or production of the motor fuel by the claimant as the Department may deem necessary and the time when the loss or nontaxable use occurred, and the circumstances of its loss or the

> specific purpose for which it was used (as the case may be), together with such other information as the Department may reasonably require.
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> The Department may make such investigation of the correctness of the facts stated in such claims as it deems necessary.

Section 13 authorizes refunds when Motor Fuel is used for a purpose other than operating a motor vehicle upon the public highways, because the tax is imposed on the privilege of operating motor vehicles upon the public highways. (35 ILCS 505/2). In the context of a Motor Fuel Tax refund claim, the above-cited statutory provision requires a filing party to provide factual information relating to the fuel purchase, along with other information that the Department may reasonably require, and the Department is authorized to investigate the correctness of the information provided in conjunction with such claim. When a business is maintaining that it purchased fuel tax-paid and then used some for an off-highway purpose, the information that should be maintained includes verifiable records that show the number of off-highway miles driven by taxpayer vehicles. These records must be capable of being investigated and audited by the Department. When a taxpayer has machines or vehicles that it uses off-highway in agricultural or other commercial operations, it must keep records of the number of off-highway trips the vehicles make and the number of miles for each trip, because these factors when multiplied yield the number of off-highway miles which, divided by the miles per gallon, yields the number of gallons of fuel eligible for the off-highway fuel usage credit.

Motor fuel can also qualify for the off-highway credit when it is utilized in operating a device or motor that itself does not propel the vehicle but rather operates a mechanism for a functional purpose such as a pump or compressor. When the motor fuel for such a use comes from the same fuel tank that dispenses the fuel to the engine that propels the vehicle upon the highways, a taxpayer must maintain records to substantiate the non-highway usage. This is the situation here as the alleged off-highway fuel usage was filed for the operation of power take-offs which are the mechanisms used to supply the power to the hydraulic lift device for the beds of dump trucks.

Positive proof required in this type of case would be documentary evidence that establishes the horsepower required to operate the power take-off motors, the amount of fuel used in such operation, and the

number of such usages. Then the fuel used multiplied by the number of usages would yield the amount of fuel that could be the subject of a Motor Fuel Tax Refund application, so long as that same fuel had not already been listed on Line 7A and used as gallonage taken as a credit by the same taxpayer on its IDR-280 Motor Fuel Use Tax return.

The Department's Correction of Returns or Determination of Motor Fuel Tax Due for the two audit periods were introduced into evidence without objection by the taxpayer (Tr. pp. 8-9; Dept. Ex. Nos. 1, and 2), and this established the *prima facie* case of the Department. Because taxpayer submitted no documentation in the form of books and records, I must conclude the *prima facie* case of the Department has not been rebutted. This conclusion is pursuant to evidentiary standards that the Illinois Appellate and Supreme Courts have established for these types of cases. Copilevitz v. Department of Revenue, 41 Ill.2d 154 (1968); Fillichio v. Department of Revenue, 15 Ill.2d 327 (1959) After introduction of the corrected return, the burden of going forward with the evidence shifts to the taxpayer, who must then introduce competent documentary evidence to show that the Notice of Tax Liability is not correct, and the evidence presented by the taxpayer must include some documentary evidence from its books and records relating to the tax at issue. Consistent with these evidentiary standards is the Appellate Court (Second District) case of Lakeland Construction Co., Inc., v. the Department of Revenue, 62 Ill. App.3d 1036 (2nd Dist. 1978), which involved a Department audit of Motor Fuel Tax liability on a taxpayer who owned 2 gravel pits, and one issue was if any of the fuel was used in non-road vehicles. The taxpayer did not introduce any records from its own books to substantiate the alleged non-road usage of motor fuel and the court held it was proper for the Department to not give the taxpayer any credits for the alleged non-road usage. Lakeland at 1039-1040.

In the instant NTL matters, because no documentary evidence has been submitted by either taxpayer from its own records to show that it is entitled to credit for non-road usage, the Department's *prima facie* case must stand.

In summary, for each matter herein, I find the Department's *prima facie* case has not been overcome by the taxpayer. A user of Motor Fuel has the burden of proving that the use to which he put it was for a purpose other than the operation or propelling of a motor vehicle upon the highways, Pascal v. Lyons, 15 Ill.2d 41, 46, (1958), and I find taxpayer has not met that burden here.

**RECOMMENDATION**

Based upon the findings of fact and conclusions of law stated above, I recommend the Department finalize Notice of Tax Liability Nos. XXXXX and XXXXX in their entirety and issue Final Assessments.

Karl W. Betz
Administrative Law Judge